WORKFLOW REVIEW:
THE SUPREME COURT OF WISCONSIN

FinalReport
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Description of the Consulting Engagement

The National Center for State Courts (NCSC) was retained by the Wisconsin Supreme Court (the Court) to review its workflow processes and use of legal staff. Penelope J. Wentland, Senior Court Management Consultant, and Susan J. Festag, a contract consultant to the National Center for State Courts, were assigned to this project. The primary catalyst for this consulting engagement was the Court's consideration of its need for additional attorney resources in chambers. The departure of one of the court commissioners also served as a factor in reviewing the type of legal work performed by the commissioners' office and their interactions with the Court.

The project staff interviewed each of the justices, their current and many of their former law clerks, their judicial assistants, the court commissioners, and the Clerk and Deputy Clerk of Court. In addition, project staff reviewed job descriptions, court and caseload statistics, various memoranda and reports provided by the Court, internal operating procedures, court rules, press releases, and procedural manuals. As a section of this final report, we include responses of the justices to the information contained in the draft report in order to provide to the Court a concise and complete document for its full consideration. A consulting engagement is more than a collection of observations and recommendations. It should also record the interaction and response of the clients as well. This is especially true for the National Center for State Courts. We not only provide consulting services to the courts but also stand as a partner in their development and progress. The inclusion of the justices' commentary on our recommendations is intended to document not only what we have done but also how the justices view our work. We especially thank the justices for their openness, frank discussion, cooperation, and time. We also thank Ms. Robin Whyte, judicial assistant to Chief Justice Shirley S. Abrahamson, for her assistance in scheduling interviews, providing materials, and distributing communications.

Organization of The Report

The final report is organized into six sections. Section I discusses workflow through the Court. Section II focuses on court commissioners. Section III discusses law clerks. Section IV looks at the student intern program. Section V presents an illustration of workflow through each of the justices' chambers. Observations, findings, and recommendations are embedded within each section of the report except for Section V. The workflows of individual chambers are presented for illustration purposes only. Section VI contains the responses of the justices to the draft report and is included as a completion of both the report and the consulting engagement itself. Appendix A is a compilation of various statistics concerning six courts of last resort – Iowa, Kansas, Kentucky, Oregon, Virginia, and Wisconsin. These five courts of last resort, in addition to Wisconsin, are the only courts of last resort in two-tiered appellate systems that are currently authorized only one law clerk per justice. A second chart in Appendix A illustrates various statistics for courts of last resort having one or more intermediate appellate courts that also report discretionary petitions and dispositions separately from mandatory cases and dispositions. Courts of last resort having two law clerks per individual justice are highlighted in yellow. Appendix B illustrates caseflow through the Court.

I. Workflow in the Supreme Court

Petitions and Commissioners' Conference. Upon filing of the petition for review, petition for bypass, or certification with the Clerk of Court, it is assigned to a court commissioner on a rotating basis. The primary difference in handling these different requests for appellate review is that a petition for bypass or a certification takes priority over a petition for review and the court commissioner must complete the work of preparing a memorandum containing a complete legal and factual analysis and a recommendation to the Court within 30 days instead of the 60 days allocated for researching and writing on a petition for review. At least one week prior to the commissioners' conference, each commissioner circulates to the Court the petitions, responses, memoranda, and an agenda sheet. Each justice currently receives three trays – one from each commissioner.

At the commissioners' conference, each commissioner (rotating their order of appearance at each conference) orally reports to the justices. The Court is asked whether there are objections to the commissioner's recommendation. If there is no objection, the commissioner's recommendation is accepted. When there is an objection or a request for discussion, a report on the case is made. Following discussion, the Court votes to grant (three affirmative votes are required to grant a petition for review whereas a petition for bypass or certification requires four affirmative votes) or deny the petition, and if granted, whether the case will be scheduled for oral argument, and whether the Court will limit the issues in the case.

The court commissioners prepare orders stating the Court's decision. Orders then go to the Clerk of Court for issuance. Orders granting a petition will include whether or not the case will be orally argued, any limitations on the issues in the case, and the briefing schedule.

NCSC Comment. Each justice receives between 60 to 100 Petitions for Review, Petitions to Bypass, and Certifications (to be known collectively as petitions from this point forward) each month. The petitions come from the court commissioners' office accompanied by any responses as well as memoranda containing the commissioners'

recommendations. According to court rules, both the petition and the response may be as long as thirty-five pages or 8,000 words. The commissioners' memoranda range in length from five to twenty-five pages depending on the complexity of the case and which commissioner wrote the memo.

The commissioners' role is to assist the justices in making these decisions, not to substitute their judgment for the judgment of the Court. The pleadings containing the arguments of the parties cannot be considered secondary to the commissioners' interpretations of these arguments. To ensure that the Court is not relying on filtered information, it is vital that the Court have enough time to review all the pleadings.

Recommendation. NCSC recommends that the Court modify this procedure in several ways. First, the justices should be given more time to review the materials. The documents should be sent to the justices at least two weeks prior to commissioners' conference. Because the commissioners' conference and oral argument are the two time-intensive monthly events, they should be scheduled two weeks apart to allow the Court enough time to prepare fully for each event.

Second, the mail trays received from the commissioners' office should be sorted by recommendation, not by the commissioner making the recommendation. One mail tray should contain petitions that the commissioners believe are "clearly grants", a second should contain petitions that the commissioners believe are "clearly denies", and the third mail tray should be for petitions where the decision is borderline and could go either way. This should assist the justices in allotting their time to those petitions that need the most attention.

Currently, the names of each case are read at commissioners' conference and if no justice dissents from the recommendation or wants to discuss it, the recommendation of the commissioner is accepted. Since the rationale for granting a petition is fully articulated in the Rules of Appellate Procedure, there will be some cases that obviously do not meet these tests. These should be the cases in the "clearly denies" tray. Those cases that are obvious denials could be handled more efficiently. Instead of reading the names of each case at the commissioners' conference and waiting for one of the justices

to say something, these cases could be handled via e-mail. The e-mail could simply list any case that the justice wants to discuss at conference or state that the justice agrees with the commissioners' recommendations in all cases set for a particular conference. Only where there is disagreement among the justices as to how a particular petition should be handled or where a justice requests discussion of a petition, would it need to be brought up in the commissioners' conference. This would cut down the time that both the commissioners and the Court must spend on cases that clearly do not meet the statutory requirements for granting petitions.

Should the Court adopt these recommendations, it will be necessary for commissioners to attend the commissioners' conference as a group since cases will no longer be discussed in order of the commissioner making the recommendation but in order of the Court's need to have discussion concerning the case.

Submission Calendar, Oral Argument, and Decision Conference. Following the Court's decision to grant a petition, the Clerk of Court, in consultation with the Chief Justice prepares and distributes the submission calendar. Oral argument rather than submission on the briefs is the default state rather than the exception for cases in this Court. Upon circulation of the submission calendar, each justice is randomly assigned one or more report cases in order to lead the discussion of that particular case or cases at the pre-argument conference. During this time, between circulation of the submission calendar and the pre-argument conference, each chambers prepares bench memos on the cases to be argued with particular attention given to a justice's report case or cases. Upon completion of oral argument, the Court meets to discuss the cases argued that day. The justice presenting the case at the pre-argument conference gives his/her analysis of the case and makes a recommendation to the Court. Where possible, the Court reaches a tentative decision on the case (at this or a subsequent conference), and the case is assigned to a justice in the majority by lot for the preparation of the Court's opinion. Justices are assigned an equal number of cases for opinion writing each month.

NCSC Comment. Oral argument is generally held ten months out of the year from early September to late May or early June for three days each month. Two cases are

set in the morning and one case is set in the afternoon. This schedule enables the court to hear approximately 90 oral arguments per term. Decisions on cases argued at the last oral argument of the term must be announced by the end of the term, typically the last business day of June. Section 3.55(a)(iii) of the ABA Standards Relating to Appellate Courts states that "opinions should be prepared within 55 days from the date of oral argument or the date of assignment". Since opinions in all cases that were orally argued during the term must be released by the end of the term, the Court clearly meets this fifty-five-day goal for many of its cases. The concern is whether an opinion that is prepared in approximately half of the time considered optimal according to ABA Standards will be perceived as representing the best efforts of the Court. The tight time constraints imposed when cases are argued at the end of May or early in June also add to the stress of court personnel at the end of the term.

Recommendation. NCSC recommends that the Court take appropriate steps to create a more consistent pace for opinion production. There are several different methods the Court could employ to alleviate this particular constriction caused by its commitment to disposing of cases by the end of the term. One method, which may not be well received, is to discard the term concept completely. Another method would be to set four cases on each oral argument day and eliminate the late May/early June oral argument setting completely. This would increase the Court's capacity for oral argument from 90 cases per term to 108.

Since the proposed modification provides for more oral argument time slots than the current schedule, the Court could either use the additional time slots to hear more cases or to add flexibility in setting the oral argument calendar. An extraordinarily complex case could be set by itself in either the morning or the afternoon. The Court could also reduce the number of cases scheduled for oral argument on a date that falls shortly after a major holiday such as the current January 3, 2001 date.

Another alternative is to go to an eight-month oral argument calendar and eliminate the early September oral argument dates as well. While the time constraints at the end of the term are obvious to court personnel, there is also a constriction at the beginning of the term as new law clerks come on board and the justices return from the

summer schedule. Eliminating the September oral argument dates would give the Court more time to prepare for the beginning of term oral arguments when some court personnel are still settling into new positions and learning a new system. Scheduling oral arguments for four cases per day over an eight-month time period allows the court to hold 96 oral arguments per term.

NCSC Comment. It is critical that the decision conference maintain its primary focus on decision-making rather than lapsing into discussion concerning peripheral issues. This becomes all the more important should the Court adopt an oral argument schedule permitting four cases per oral argument day. In addition, for those cases where a justice must recuse himself/herself from the discussion, it is suggested that those cases be moved to the end of the conference so that decisions to be made by the entire Court may be discussed first.

Opinion Circulation. Opinions are circulated to the Court at least seven days before their consideration at a scheduled conference. Written comments to the author of the opinion as well as the rest of the Court should be circulated at least three days before the scheduled conference.

NCSC Comment. What is not mentioned in the Court's Internal Operating Procedures is a suggested timeframe for the completion of a draft opinion. Whereas a rose is always a rose, not all cases are equal and there is naturally some reluctance to predetermine a timeframe in which one must research, consider, reflect, dialog, and draft. However, the fifty-five-day standard has been articulated as being more appropriate than less and has been accepted as such. "Opinion preparation has been called the single most time-consuming task in the appellate process."[1]

Recommendation. NCSC recommends that the Court adopt the ABA fifty-five-day standard for the drafting of an opinion as its own standard and incorporate this standard into its Internal Operating Procedures. Where a particular case obviously requires more time, the Court may agree to set aside the standard and set a more

[1] American Bar Association, Judicial Administration Division, *Standards Relating to Appellate Courts*, American Bar Association, Chicago, Illinois, 1994, p. 113.

appropriate timeframe in its place for that case. We believe that adoption of this standard will enhance the collegiality of the Court and set appropriate expectations for all chambers.

NCSC Comment. As discussed in Section III of this report, not all justices participate equally in the circulation of written comments on draft opinions. As a group, the justices perceived the comment function as an important one and many felt that, given additional attorney resources in chambers, each justice could participate more fully.

Recommendation. NCSC recommends that each justice avail himself/herself of the opportunity to participate fully in writing and circulating comments on draft opinions. It is through this process that an opinion authored by one justice becomes fully and finally the Court's opinion.

Concurrences and Dissents. Opinions are voted on at the conference. More than minimal changes require that the opinion be recirculated and reconferenced. If a justice intends to write a concurrence or dissent, he/she will announce so at opinion conference. This announcement will place a hold on an opinion and therefore, the justice intending to write a concurrence or dissent gives that first priority in his/her chambers. Justices writing concurrences or dissents will circulate those opinions prior to circulating opinions in cases assigned to them.

NCSC Comment. The decision to concur or dissent represents a significant commitment on the part of the justice to a particular issue or position. It is a decision that cannot typically be made until an opinion is circulated. Therefore, this decision impacts the work of the Court as a whole and the work of the concurring or dissenting justice in particular. It is critical that circulating a concurrence or dissent follow appropriately the circulation of the majority opinion itself. A chambers should discipline itself to complete the concurrence or dissent in a timeframe that reflects favorably on the Court as a whole.

Mandate. It is intended that the Court's decision be mandated promptly once the opinion is approved by the Court and the Clerk is notified by the Chief Justice.

NCSC Comment. The time between approval by the Court of the opinion and its mandate should be the minimum necessary to ensure that the majority opinion is

formatted appropriately for publication and that any concurrences and/or dissents are attached. While some staging in the release of mandated opinions may be appropriate, it is important to ensure that no unnecessary obstacles or delays are introduced into the process. The adoption of a time standard for the drafting of opinions may alleviate some of the pressures to control the timing of the mandate itself.

Administrative Matters. Although not a component of the appellate decision process itself, a significant responsibility in any court of last resort is its role as head of the judicial branch. This role presents itself in any number of administrative matters that the Court must consider ranging from lawyer and judicial discipline to rule making, formulation of and appointments to commissions, and other issues ranging from technology to strategic planning. Currently administrative matters are considered in a separate conference each month and may require the attendance of the state court administrator, court commissioners, or other individuals as needed. In addition, the Court's administrative conference is open except when confidential matters are considered. This unique practice focuses may highlight the administrative work of the Court for the public just as oral argument can focus public opinion and comment on the judicial work of the Court. Just as a justice must prepare for a commissioners' conference, oral argument, and other conferences, justices must prepare to discuss administrative matters as well. A common concern among the justices is the amount of time currently required to prepare, consider, and dispose of these matters. While administrative matters are not likely to reduce either in number or in the time required to address them, it may be possible to restructure their consideration by the Court to effectively maximize the time spent on them.

Recommendation. NCSC recommends that the Court require circulation of materials to be discussed at the administrative conference at least one week prior to the conference itself and make this requirement known to all entities bringing business before the administrative conference. NCSC also recommends that the Court consider

permitting the participation by justices outside the Madison area by telephone or video conferencing.[2]

[2] Technologies such as Microsoft's Net Meeting and the addition of a desktop camera can transform any networked computer into a videoconference node.

II. Court Commissioners

The court commissioners who have served the Wisconsin Supreme Court have, in the past, basically divided their duties into two categories: recommending the granting or denial of petitions and certifications to the Supreme Court justices and drafting orders incorporating the Court's grant or denial and everything else. Everything else has consisted of:

- assisting the Court in matters of lawyer discipline, judicial discipline, bar admission, CLE approval proceedings, and rule-making petitions,
- drafting and revising Supreme Court Internal Operating Procedures, Supreme Court Rules, and rules of pleading, practice, and procedure,
- assisting the clerk's office in its motion practice,
- advising the clerk's office and the Director of State Courts on substantive and procedural issues,
- conducting research,
- staffing or serving on committees,
- acting as a liaison to various groups, and
- overseeing Supreme Court and chief justice appointments as well as other duties as assigned.

Three commissioners focused on petitions and certifications and the fourth commissioner performed the other duties.

Institutionalization of Knowledge in the Court. From both an organizational and managerial perspective, this division of labor has several drawbacks. Most importantly, knowledge is institutionalized in the individuals performing the functions rather than to the Court itself. While there is always a change in productivity when a seasoned employee leaves, if the knowledge of the institution leaves as well, it makes it particularly difficult to resume smooth functioning. The organization has the responsibility to ensure that the knowledge required for its continued efficient and effective functioning resides within the organization itself. This does not mean that a justice must know the nuances of everything a commissioner is responsible for. What it does mean is that the organization must implement policies that mandate the institutionalization of knowledge through current and complete job descriptions, a policy

and procedure manual describing how work should be performed in the commissioners' office, and the creation of a shared issues bank, library resources, and aggregate statistics concerning work in the commissioners' office. It is also important to implement cross training among the staff of all the functions for which the commissioners' office is responsible. Currently, a single job description exists for commissioner outlining the duties and responsibilities as well as the training and skills required for the position. In addition, the duties and responsibilities that are outside the functions focused on petitions and certifications may be categorized into four classifications: discipline, rule making, practice, and administration. The following table illustrates how various duties fall under one of these four categories:

DISCIPLINE	RULE MAKING	PRACTICE	ADMINISTRATION
Assist the Court in matters of lawyer discipline.	Draft and revise Supreme Court Internal Operating Procedures.	Assist the Court in original actions or other proceedings.	Staff or serve on committees.
Assist the Court in matters of judicial discipline.	Draft and revise Supreme Court Rules.	Assist the clerk's office in its motion practice.	Act as a liaison to various groups.
Assist the Court in matters of license reinstatement.	Draft and revise rules of pleading, practice, and procedure.	Advise the clerk's office on substantive and procedural issues.	Oversee Supreme Court and chief justice appointments.
Assist the Court in matters of bar admission.	Assist the Court in matters of rule making petitions.	Advise the Director of State Courts on substantive and procedural issues.	Conduct research on administrative issues.
Assist the Court in matters of CLE approval proceedings.	Conduct research on rule making issues.	Conduct research on practice issues.	Conduct law clerk orientation.
Conduct research on disciplinary issues.	Perform other duties as assigned.	Perform other duties as assigned.	Distribute and monitor financial disclosure forms.
Perform other duties as assigned.			Respond on the Court's behalf to inquiries.
			Perform other duties as assigned.

Recommendation. NCSC recommends that all four commissioners serving the Court share the duties and responsibilities for petitions and certifications and one of the other areas of work as outlined above. A commissioner should be assigned responsibility for discipline, rule making, practice, or administration for one year and then each commissioner should rotate to a different area of responsibility. Rotation should continue

on a yearly basis permitting each commissioner to gain experience in all functions of the Court outside of petitions and certifications. After four years, all commissioners will have had experience in all areas of responsibility.

Recommendation. NCSC also recommends that the Court create an electronic, searchable index of all petitions and certifications filed with the Court. This index would be available to justices, law clerks, and court commissioners. Such an index would be searchable by party and issue and should consist of, at a minimum, parties' names, date of filing, issues on appeal (natural language search), trial court or administrative agency where case was initially heard, date and disposition of initial case, disposition of any intermediate appeal(s), commissioner's recommendation, and action taken by the Court (grant or deny).

Both of these recommendations are intended to assist the Court in retaining and institutionalizing the knowledge that currently resides within the court commissioners themselves. These recommendations, when combined with the recommended modification for the format of the commissioners' conference, should leverage the knowledge, experience, and expertise of the court commissioners for the benefit of the Court.

III. Law Clerks (In-Chambers Legal Staff)

In the past, each justice has hired one law clerk to assist him/her during the course of a term. Of the courts of last resort in states also served by an intermediate appellate court, Wisconsin is one of six[3] authorized only one law clerk per justice. While numbers cannot tell a complete picture, included is a statistical table taken from various National Center for State Courts' publications in Appendix A. What is far more important than the numbers is how an additional law clerk per chambers could contribute to the Court's work.

Completion of the Term's Work. The Court has historically finished a term's work within the term or very shortly thereafter. Therefore, an additional law clerk would not directly enable each chambers to complete its work – for that is already occurring. We cannot directly measure the stress or strain that meeting that goal has on justices, law clerks, judicial assistants, and the clerk's office staff other than to say interviews revealed, to no one's surprise, that May and June are much more difficult months than October or November. To say that an additional law clerk would enhance the quality of the Court's work could be misperceived as implying that quality does not exist today.

Writing Concurrences or Dissents. To say that an additional law clerk would encourage a chambers to write a concurrence or dissent also implies that a justice does not fully explore and explain the argument the Court has been petitioned to hear. We did not discover any hesitation among the justices to write concurrences or dissents when so moved. Justices have not traditionally used in-chambers staff for either the attendant or extra-legal roles as defined in *The Work of Appellate Court Legal Staff*[4]. Law clerks most often fill the preparatory and assisting roles, constructing bench memos in preparation for oral argument and drafting, editing, and researching opinions alongside the justice.

Substantive Comments on Draft Opinions. The justices have by custom and procedure made their substantive comments on draft opinions in writing. The

[3] Other states where only one law clerk per justice is authorized are Iowa, Kansas, Kentucky, Oregon, and Virginia. Source: Hanson, Roger A., Flango, Carol R., and Hansen, Randall M., *The Work of Appellate Court Legal Staff*, National Center for State Courts, Williamsburg, Virginia, 2000.

opportunity to consider and provide substantive feedback on draft opinions is the one task most often cited that a second law clerk would enhance a chamber's ability to perform. It must also be said that, in the past, written comments have been more available from some justices than from others. We do not know if this is because of disposition, work habit, reticence, or deference as an equal among equals. Other potential reasons for this include both the time-consuming work of opinion drafting itself and the untimely circulation of draft opinions in the past. Information gained during this project indicates that using a second law clerk to assist in this function would enhance the collegiality of the opinion process permitting a full discussion of both substance and nuance.

Preparation for Petition Conference. Our observation is that the petition and certification process operates at a pace that does not permit a justice to fully utilize his/her chambers staff in preparation for the commissioners' conference. Given the short timeframe between receipt of petitions and memoranda from the court commissioners to the actual commissioners' conference itself, there is little time for a justice to perform additional research into questions the petitions and memoranda may generate. And if the timing of the receipt of petitions and memoranda to the commissioners' conference is changed, as we recommend, in-chambers staff is typically devoted to preparation for oral argument or opinion drafting and revision. The availability of a second law clerk in conjunction with an expanded timeframe would enhance preparation for the commissioners' conference. This does not mean that we believe the Court has not taken the cases it should be taking. There is no way we can make that determination. What we do mean is that additional time and additional staff to devote to the petition and certification process would assure the Court that it has thoroughly considered the merits of each petition in a less hurried and less stressful environment.

Enhanced In-Chambers Dialog. Another factor cited more often by law clerks than by justices that supports the argument for a second law clerk is the increased opportunities for dialog and feedback within the chambers. Appellate work is isolating and its very nature requires long stretches of uninterrupted time for research, reflection,

[4] Hanson, Roger A., Flango, Carol R., and Hansen, Randall M., *The Work of Appellate Court Legal Staff*, National Center for State Courts, Williamsburg, Virginia, 2000, pp. 11-12.

and writing. The mechanism of collegiality is both highly formalized and ritualized for the justices and for their law clerks as well. However, a justice may opt for less formal peer communications whereas a law clerk cannot. A second law clerk extends the chambers exposure to another set of opinions, reason, training, and perceptions. This being said, making law clerks less lonely in their work may not be a convincing argument to fund an additional seven full-time positions with salary and fringe benefits.

The Second Law Clerk. During this current term, five of the seven justices have hired additional law clerks utilizing alternative procedures that permit the temporary addition of staff without increasing the authorized complement of full-time employees. This option was available to all justices of the Court. We were not able to ascertain objectively what tangible benefits these new staff members have added in the short time that they have been onboard. However, there is an enhanced sense of collegiality within those chambers and work is currently divided evenly between law clerks. Performance expectations of the two law clerks are identical.

Unfortunately, the working conditions under which the two clerks were hired are not identical. The first law clerk is considered an exempt employee and may work in excess of 40 hours per week without payment of overtime. The second law clerk is a limited term employee and restricted to no more than 40 hours per week. While this difference has not created any issues of which we are aware to date, should this term prove similar to last year, by the end of the term the restriction on hours of the second law clerk could cause significant differences in both working conditions and expectations and may impact collegiality. This end-of-term crunch[5] may be obviated by the very presence of two law clerks in chambers throughout the term.

Two-Year Tenure of Law Clerks. An additional benefit that may be derived from the utilization of a second law clerk is illustrated by those justices who have retained last year's law clerk for a second term. There is typically a downward trend in production at the beginning of the term as a law clerk settles in, learns the work, and learns to work with the justice. Retaining a law clerk for a second term provides an experienced senior

law clerk in the chambers to orient and mentor the second law clerk while permitting the chambers to move into the new term and maintain a steady production of work. Law clerks also work closely with interns from the University of Wisconsin and Marquette University who have been assigned to chambers for a semester. It can be overwhelming to adjust to a new job, in a court of last resort, and also be required to supervise one or more interns having less experience, training, and exposure than yourself. The carryover of the second law clerk permits the chambers to provide experienced supervision by an individual already competent in the work of the chambers.

Intermediate Appellate Court Attorney Staffing. No court functions in isolation. Should the Supreme Court seek and receive permanent authorization for additional attorney resources without a corresponding consideration of the attorney resources needed by the Court of Appeals and the circuits may be perceived as insensitive and inappropriate. Like the Supreme Court, judges of Wisconsin's Court of Appeals are also authorized only one law clerk per judge. And like Wisconsin, Iowa, Kansas, and Virginia have one in-chambers law clerk per judge in their intermediate appellate courts whereas Kentucky has two per judge and Oregon 1.8 per judge. Iowa provides .3 staff attorneys per judge, Kansas 1.6 staff attorneys per judge, and Virginia 1.9 staff attorneys per judge where as Wisconsin provides .7 staff attorneys per judge.[6] Only Iowa provides less total attorney resource per judge than Wisconsin at the intermediate appellate court level.

Recommendation. NSCS believes that the current quality work of the Court would be enhanced through the permanent addition of a second law clerk to each chambers if the second law clerk assisted the justice in the review of petitions under the recommended revised timeline for distribution of petitions to each chambers. In addition, the second law clerk should be used for the thorough review of, in-chambers dialog about, and written commentary on circulating opinions. The Court has an exceptional history of little or no carryover of cases from one term to another. Therefore, the justification for a second law clerk cannot be found in the numbers. This does not mean

[5] The Court has also take other measures to prevent or at least reduce the end-of-term crunch by setting due dates for opinion drafts and including these reminders on internal Court schedules.
[6] Hanson, Roger A., Flango, Carol R., and Hansen, Randall M., *The Work of Appellate Court Legal Staff*, National Center for State Courts, Williamsburg, Virginia, 2000, pp. 91-93, 120, 136, and 140.

that each justice could not use additional attorney resources. The Court also has a history of releasing more opinions later each term. The more efficient production and circulation of opinions, concurrences, and dissents, as well as additional time for thoughtful and considered commentary that could be supported through the addition of a second in-chambers law clerk could reverse this course. A study of intermediate appellate courts found that "each additional case filing per law clerk adds approximately one additional day to every court's case processing time."[7] While the work of an intermediate appellate court is quite different from that of a court of last resort, the pressures of timely case processing and the court's responsiveness and responsibility to litigants exist for both levels of courts. Could the Wisconsin Supreme Court become more expeditious in its resolution of appeals? Potentially. Should it? Perhaps not. The greatest gain from an additional law clerk may come from the time gained for a considered response, considered criticism, and expanded dialog.

Caveat. All this being said, we must look at the environment in which the additional resources would be requested. There has not been unanimous support in the Court itself for additional attorney resources. The subject has not arisen spontaneously in the legislature during budget proceedings and the executive branch has not exhibited, thus far, a willingness to champion the cause. Nor should such a request be now pursued without some consideration for the needs of the Court of Appeals. To do so could be perceived as indifference. To sever a request for attorney resources from that of the intermediate appellate court or consideration of attorney resource requirements in the circuits themselves could jeopardize respect for the Court and make its leadership of the court system difficult. Nor can the Court continue, on a long-term basis, its use of limited term employees. However, the Court has, for a number of years, placed its needs last on the list of appropriations and this may be the appropriate time to pursue meeting those needs.

The Bottom Line. Can the Court make good use of additional attorney resources? Yes. Can that be proved objectively? We were unable to accomplish that. What impact will the presence of a second law clerk in five of the seven chambers have? This term

[7] Hanson, Roger A., *Time on Appeal*, National Center for State Courts, Williamsburg, Virginia, 1996, p.41.

presents an opportunity to demonstrate how utilization of a second law clerk assists the work of the Court. The Court should carefully monitor both the costs and benefits this term's utilization of limited term employees has made possible. Is the current environment conducive to the Court's request? Probably not. Can that environment be changed? Yes. The Court has the opportunity to work with the Court of Appeals and the circuits to objectively evaluate the need for additional attorney resources across the court system. The Court should package that request within a comprehensive strategic plan that addresses the goals and objectives of the Wisconsin judicial branch.

Recommendation. Although this is a minor point, we recommend that the Court review its orientation for law clerks. In addition to the information provided by the court commissioners, we recommend that the Court expand the orientation to include a "Day in the Life of a Law Clerk". This program should be directed by former law clerks (perhaps several years away from their clerking experience) who candidly explain life in the coming year. This program is not about how to work for a particular justice but how to be a law clerk; what to expect; what is good about the experience; and what is the downside of the experience. While the orientation done by the court commissioners is very important, they are unable to accurately relate the experience of working in chambers with the justices because that is not what they do.

IV. Student Interns

The Court permits both the University of Wisconsin and Marquette University to assign law students to each chambers as interns. These programs are supposed to have reciprocal benefits for the students and for the Court. Students have the opportunity to do legal writing in the real world; they are able to participate in the dialog of the chambers concerning cases before the Court; they work in close contact with a Supreme Court justice. Each chambers should also benefit by being able to frame and shape the student's work and then use it. The Court could benefit by its willing participation in the educational process that adds competent lawyers to the legal community of Wisconsin. Whether this actually occurs depends almost totally on the quality of the intern. The reports from justices and law clerks were consistent in that a good intern can and does make a worthwhile contribution to the work of the chambers and a bad intern could seriously harm the work of the chambers by taking resources away from the work that must be done. The supervision of a student intern typically falls to the law clerk and it is with the law clerk that the intern works most closely. We believe this relationship could be enhanced if the supervision of interns was the responsibility of a senior law clerk in a chambers having two law clerks where each served for an overlapping period of time.

Recommendation. NCSC recommends that the Court work with the University of Wisconsin and Marquette University to establish certain prerequisites for students desiring to intern at the Supreme Court. Prerequisites might include a certain grade point average, prior completion of specific courses, and a certain commitment of hours per week that appropriately corresponds to the credit hours given for the internship. Credit hours should be standardized so that a chambers having interns from both the University of Wisconsin and Marquette University is fairly served by each intern. Each chambers should also have the option of dismissing non-performing interns during the course of the semester should that become necessary.

V. Chambers Workflows

This section presents illustrations of the workflow for each Justice's chambers. What is most important to remember in reviewing these charts is that they simplify the process in order to illustrate it. The work of a justice is focused on reading, researching, writing, presenting, listening, questioning, arguing, more writing, the endless process of revision, review, commenting, and, ultimately, deciding. Nor do these charts represent the administrative, committee, or public service work that each justice also does in addition to his/her judicial work.

Work in each chambers falls into four major divisions: deciding which cases the Court should hear, preparing for oral argument and the postargument decision conference, opinion writing, and the opinion review process. In some chambers, the preparation for oral argument and the postargument decision conference and opinion writing processes flow into each other and are presented together. In some instances, the review process within chambers of comments offered by other chambers on its opinions has been separated from the opinion writing process and stands above the opinion review process for circulating opinions.

Most importantly, there is no right or wrong way to do this work. Each chambers has found a pace and routine that fulfills the Justice's expectations and creates and supports an environment in which quality work is done.

NOTE: THE WORKFLOW CHARTS ARE NOT AVAILABLE ON THE WEB VERSION OF THE REPORT. TO RECEIVE A COPY OF THE CHARTS, CONTACT THE COURT INFORMATION OFFICE AT (608) 264-6256.

VI. The Justices' Responses

Chief Justice Abrahamson

My thanks to you and your staff for meeting with the justices and court staff in preparing the report and your descriptions and recommendations. Meeting with us forced each of us to rethink how we perform our tasks. Self-study, as well as an outsider's study, is very useful to any organization. I plan to place each of the report's recommendations on the agenda for an open administrative conference so that the justices may discuss each recommendation and decide whether to adopt it, adapt it, or reject it.

As you know, after considering this court's caseload, other supreme court caseloads and staffing, our law clerk and four central staff positions, the staffing needs of the circuit court and court of appeals, and the resource needs of the entire court system, I have not favored a second law clerk for this court. A second law clerk would be justified, according to the report, if the second law clerk would enhance a justice's preparation for the petitions conference (each justice already benefiting from a memorandum on each petition by senior staff), would enhance substantive comments on draft opinions and would reduce the year-end bunching of opinions. In the last six months in which five justices have had two law clerks the report's proffered justifications for a second law clerk have not manifested themselves.

NCSC did not receive comments from Justice Bablitch.

Justice Wilcox

I have reviewed the Draft Report -Workflow Review of the Wisconsin Supreme Court. I agree with your observations regarding the addition of a second law clerk for each of the justices, as well as additional staff attorneys for the Court of Appeals and support help for the circuit courts. I also agree with your recommendations regarding the Court's modifying the procedure in which it handles petitions for review and the scheduling of the petitions conferences and oral argument days to allow more time to review the materials.

The report was well done, and I thank you for the time the effort you and others put into this report. I look forward to receiving the final report.

Justice Bradley

Thank you for the well considered and well written report. A periodic study and assessment of the way we do our work is beneficial both to us and to those we serve.

I offer the following comments not to address the merits of the report's recommendations or observations, but rather to assist in clarifying any premise or factual statements.

Page 9. "Currently administrative matters are considered prior to the weekly conference." The statement would have been correct prior to April 1999. However, it is no longer accurate. In April 1999 our supreme court was probably the first in the country to vote for open administrative conferences. Thus, currently, our administrative matters are generally scheduled in open conference in whole-day or half-day segments. During the 1999-2000 term, 7 full-day and 16 half-day open administrative conferences were held. Thus far in the 2000-2001 term, we have held 3 full-day and 9 half-day open conferences.

In addition to the open administrative conferences, we also have some closed administrative conferences on discrete matters and discuss administrative issues at annual meetings with the state's Chief Judges, Policy Planning and Advisory Committee, Board of Bar Examiners, and the Court of Appeals Judges.

I agree with your statement that "administrative matters are not likely to reduce either in number or in the time required to address them . . ." Thus, in view of our current practice and number of administrative conferences, you might want to also reflect on the accuracy of your recommendation that "the Court schedule an administrative conference to address administrative matters only on a monthly or semi-monthly basis.

Section 3. Law Clerks. While the report discusses the many benefits of a second law clerk, the comments in part are premised upon (a) that a second law clerk will

increase the written comments by chambers on draft opinions, and (b) will avoid the "year-end crunch" by having more opinions circulated earlier in the term.

Both of the assumed premises may be incorrect. To date this term, there is no discernible difference in either the number of written comments or the timeliness of the opinions.

We appreciate Justice Bradley's comment on our misunderstanding and have modified the text of the report to accurately reflect the Court's schedule for a separate and open administrative conference.

Justice Crooks

I have received and reviewed the Draft Report of the Workflow Review of the Supreme Court of Wisconsin. The report was very well done. I appreciate the time and effort you and others from the National Center for State Courts expended on collecting and distilling the necessary information, and forming recommendations.

I understand that you intend to include our responses and recommendations as a section of the final report. I have no corrections, but a few comments. I found particularly valid the observations regarding the need and use for "additional attorney resources"--for example, a second clerk for this Court and additional staff attorneys for the Court of Appeals and clerks for the circuit courts. I also agree with the recommendations regarding the Court's review of petitions.

Justice Prosser

The National Center for State Courts has prepared a very thought-provoking analysis of our court's operation and decision-making process. Suggesting a new paradigm is useful. Yet, I find myself in disagreement with several of the suggestions. For example, I disagree with the suggestion to reorganize the petitions for review by recommendation category. I disagree with the proposal that the court hear four arguments per day. For several reasons, I disagree with the rotation system suggested for our court commissioners. I have reservations about the court's ability to take on two or three additional cases per justice each term and about some of the suggestions concerning

the administrative conferences. I don't know what the last full sentence on page 9 of the draft report means.

I like the idea of a longer period for consideration of petitions for review. The index proposed on page 12 is quite interesting but it might compromise confidentiality. The second law clerk discussion is constructive and appreciated.

I don't understand the statement: "Justices have not traditionally used in-chambers staff for either the attendant or extra-legal roles as defined in The Work of Appellate Court Legal Staff.

The Work of Appellate Court Legal Staff defines the attendant role as one where the law clerk assumes special responsibilities for their judges. It is a role more typically assumed by a law clerk to a chief judge. These may include special administrative tasks as well as unique legal tasks. Examples of "attendant duties" include gathering legal references for the judge, tracing precedent, rechecking citations and assisting in administrative and secretarial matters. "Extra-legal duties" may include chauffeuring, clerical duties, making social arrangements and appointments, or speech writing.

Justice Sykes

I have reviewed the draft report and have no corrections, nor any additional comments beyond those made in the original round of interviews, which are already incorporated into the draft.

I thought the draft report was excellent. Your observations and recommendations for improvement will be extremely helpful to the court.

	Iowa	Kansas	Kentucky	Oregon	Virginia	Wisconsin	
Total Mandatory Cases	1548	230	444	271	127	NJ	(1)
Total Discretionary Petitions		1019	779	962	2576	1189	(1)
Total Discretionary Petitions Filed Granted	2	30	NA	59	216	0	(1)
Mandatory Cases & Discretionary Petitions Filed - Number	1548	1249	1223	1233	2703	1189	(1)
Mandatory Cases & Discretionary Petitions Filed - Per Judge	172	178	175	176	386	170	(1)
Mandatory Cases & Discretionary Petitions Filed Granted - Number	1550	260		330	343	101	(1)
Mandatory Cases & Discretionary Petitions Filed Granted - Per Judge	172	37		47	49	15	(1)
Total Mandatory Cases Disposed	340	1228	465	278	87	NJ	(1)
Total Discretionary Petitions Disposed	1810		749	929	2769	1177	(1)
Total Discretionary Petitions Granted Disposed	NA	NA	NA		0	101	(1)
Total Dispositions by Signed Opinion	213	343	146	110	161	103	(1)
Number of Opinions per Judge	24	49	21	16	23	15	(1)
Number of Lawyer Support Personnel (may include Law Clerks, Central Staff Attorneys, and Clerks of Court)	16	7	13	10	23	10	(1)
Total Attorneys per Judge	2	1.4	1.7	1.4	2.4	1.6	(2)
Staff Attorneys per Judge	1	0.4	0.7	0.4	1.4	0.6	(2)
In-Chambers Legal Staff per Judge	1	1	1	1	1	1	(2)
Total Attorneys per IAC Judge	1.3	2.6	2.6	2.2	1.9	1.7	(2)
Staff Attorneys per IAC Judge	0.3	1.6	0.6	0.4	0.9	0.7	(2)
In-Chambers Legal Staff per IAC Judge	1	1	2	1.8	1	1	(2)

(1) Source: *State Court Caseload Statistics, 1998,* NCSC.
(2) Source: *The Work of Appellate Court Legal Staff, 2000,* NCSC.

SELECTED DATA FROM STATE COURT CASELOAD STATISTICS, 1999-2000 and THE WORK OF APPELLATE COURT LEGAL STAFF	AK	AZ	CA	CO	CT	FL	GA	HI	ID	IL	KY	LA	MD	MA	MI	MN	MO
Total discretionary petitions filed (T2)	187	1209	8265	1378	365	2629	1148	78	82	2200	803	3457	702	781	2242	656	577
Total discretionary petitions filed granted (T2)	16	NA	98 A	NA	61	NA	56	31	68	101	NA	337	98	79	56	74	52
Total discretionary petitions disposed (T2)	199	1287	8599	1615 B	216 B	2422	1066	82	86	2208	746	3131	702	781	2568 B	573	603
Total discretionary petitions granted disposed (T2)	30	NA	98	NA	NA	NA	51	NA	58	0	NA	411	NA	NA	NA	78	56
Point at which cases are counted (T2)	1	6	6	1	1	1	2	2	1	1	6	2	2	2	1	1	1
Discretionary petitions filed (T4)	187	1209	8265	1378	365	2629	1148	78	82	2200	803	3457	702	781	2242	656	577
Discretionary petitions disposed (T4)	199	1287	8599	1615 B	216	2422	1066	82	86	2208	746	3131	702	781	2568	573	603
Disposed as a percent of filed (T4)	106%	106%	104%			92%	93%	105%	105%	100%	93%	91%	100%	100%	115%	87%	106%
Number of judges (T4)	5	5	7	7	7	7	7	5	5	7	7	8	7	7	7	7	7
Filed per judge (T4)	37	242	1181	197	52	376	164	16	16	314	115	432	100	112	320	94	82
Filed per 100,000 population (T4)	30	25	25	34	11	17	15	7	7	8	20	79	14	13	23	14	11
Discretionary petitions filed (T5)	187	1209	8265	1378	365	2629	1148	78	82	2200	803	3457	702	781	2242	656	577
Discretionary petitions filed granted (T5)	16	NA	98 A	NA	61	NA	56	31	8	101	NA	337	98	79	56	74	52
Discretionary petitions granted disposed (T5)	30	NA	98	NA	NA	NA	51	NA	58	0	NA	411	NA	NA	NA	78	56
Granted as a percent of filed (T5)	9%				17%		5%	40%	10%	5%		10%	14%	10%	2%	11%	9%
Disposed as a percent of granted (T5)	188%						91%		725%			122%				105%	108%
Number of judges (T5)	5	5	7	7	7	7	7	5	5	7	7	8	7	7	7	7	7
Filed granted per judge (T5)	3		14		9		8	6	2	14		42	14	11	8	11	7
Total dispositions by signed opinion (T6)	153	49	88	196	167	218 B	NA	88	130	104	157	106	180	226	85	NA	NA
Number of authorized judges (T6)	5	5	7	7	7	7	7	5	5	7	7	8	7	7	7	7	7
Number of opinions per judge (T6)	31	10	13	28	24	31		18	26	15	22	13	26	32	12	NA	
Number of lawyer support personnel (T6)	15	15	50	14	14	23	17	16	11	24	13	38	14	20	19	10	15
Central staff attorneys (WACLS)	0	12	32	1	9	6	3	5	1	7	5	12	0	5	19	4	0
In-chambers legal staff per judge (WACLS)	3	2	5 [8]	2	1.5 [2]	2 [3]	2	2	2	3	1	3	2	2	3	1.5	2

A - Washington - Total discretionary petitions filed and disposed data do not include some civil and criminal discretionary petitions.

B - Colorado - Total discretionary petitions disposed data include all mandatory disposed cases.

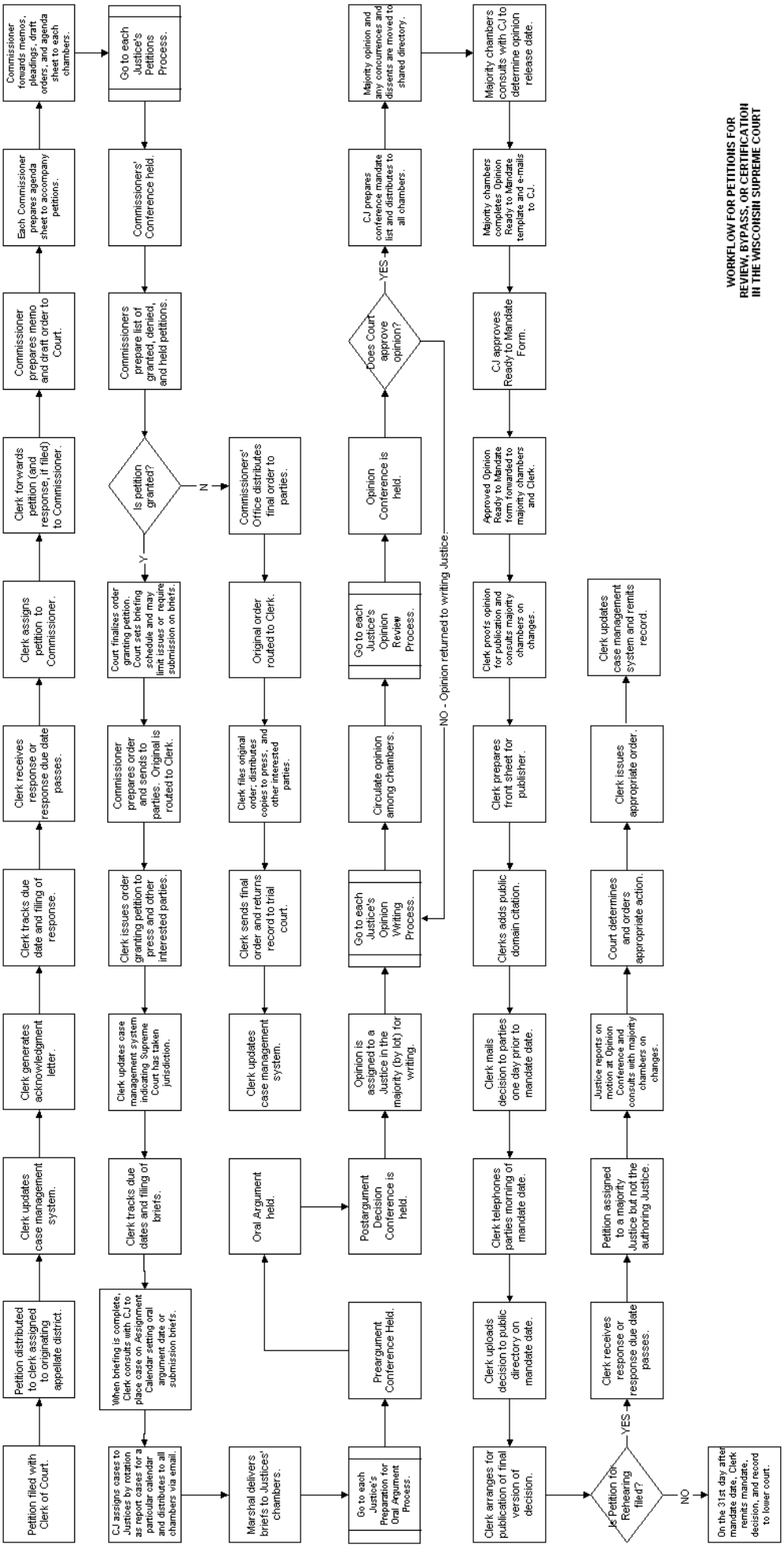
POINTS AT WHICH CASES ARE COUNTED: 1 - At the notice of appeal; 2 - At the filing of trial record; 3 - At the filing of trial record and complete briefs; 4 - At transfer; 5 - Other; 6 - Varies.

NA - Indicates that the data are unavailable. Blank spaces indicate that a calculation is inappropriate.

[ ] - Indicates the number of legal staff assigned the Chief Justice if different.

SELECTED DATA FROM STATE COURT CASELOAD STATISTICS, 1999-2000 and THE WORK OF APPELLATE COURT LEGAL STAFF											
	NE	**NJ**	**NM**	**NC**	**OH**	**OR**	**PR**	**SC**	**VA**	**WA**	**WI**
Total discretionary petitions filed (T2)	306	2969	513	609	1653	1037	1002	1109	2881	1355 A	1101
Total discretionary petitions filed granted (T2)	NA	112	29	NA	222	0	NA	129	223	NA	0
Total discretionary petitions disposed (T2)	(B)	2808	513	616	1565	1013	1085		2810	1259 A	1128
Total discretionary petitions granted disposed (T2)	NA	NA	29	105	NA	(B)	NA	4	0	NA	101
Point at which cases are counted (T2)	1	1	5	2	1	1	1	2	1	6	6
Discretionary petitions filed (T4)	306	2969	513	609	1653	1037	1002	1109	2881	1355 A	1101
Discretionary petitions disposed (T4)	327	2808	513	616	1565	1013	1085	898	2810	1259 A	1128
Disposed as a percent of filed (T4)	107%	95%	100%	101%	95%	98%	108%	81%	98%	93%	102%
Number of judges (T4)	7	7	5	7	7	7	7	5	7	9	7
Filed per judge (T4)	44	424	103	87	236	148	143	222	412	151	157
Filed per 100,000 population (T4)	18	36	29	8	15	31	40	29	42	24	21
Discretionary petitions filed (T5)	306	2969	513	609	1653	1037	1002	1109	2881	1355 A	1101
Discretionary petitions filed granted (T5)	NA	112	29	86	222	0	NA	129	223	NA	0
Discretionary petitions granted disposed (T5)	NA	NA	29	105	NA	NA	NA	4	0	NA	101
Granted as a percent of filed (T5)		4%	6%	14%	13%		7%	12%	8%		
Disposed as a percent of granted (T5)			100%	122%				3%			
Number of judges (T5)	7	7	5	7	7	7		5	7	9	7
Filed granted per judge (T5)		16		12	32			26	32		
Total dispositions by signed opinion (T6)	256	117	64	144	330	98	137	153	161	148	134
Number of authorized judges (T6)	7	7	5	7	7	7	7	5	7	9	7
Number of opinions per judge (T6)	37	17	13	21	47	14	20	31	23	16	19
Number of lawyer support personnel (T6)	16	25	10	15	20	10	29	21	23	23	10
Central staff attorneys (WACLS)	1	4	0	0	11	2.5	10	9	10	5	4
In-chambers legal staff per judge (WACLS)	2	3	2	2	3	1	3	2	1	2	1
A - Washington - Total discretionary petitions filed and disposed data do not include some civil and criminal discretionary petitions.											
B - Colorado - Total discretionary petitions disposed data include all mandatory disposed cases.											
POINTS AT WHICH CASES ARE COUNTED: 1 - At the notice of appeal; 2 - At the filing of trial record; 3 - At the filing of trial record and complete briefs; 4 - At transfer; 5 - Other; 6 - Varies.											
NA - Indicates that the data are unavailable. Blank spaces indicate that a calculation is inappropriate.											
[ ] - Indicates the number of legal staff assigned the Chief Justice if different.											

Appendix B



WORKFLOW FOR PETITIONS FOR REVIEW, BYPASS, OR CERTIFICATION IN THE WISCONSIN SUPREME COURT